

## FIFTY-SECOND ORDINARY SESSION

In re MORLEY

Judgment No. 599

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Cyril John Morley on 19 March 1983 and corrected on 15 June, the EPO's reply of 5 September, the complainant's rejoinder of 14 November 1983 and the EPO's surrejoinder of 16 January 1984;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 47 and 107 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, an Englishman born in 1930, joined the EPO in Munich in November 1977. He was in charge of reprography and held grade B4, later B5. His staff report for 1979, signed by his reporting officer, Mr. Chesi, on 6 November 1980, gave him a rating of "4" for "Relationship with others" and said: "Mr. Morley's relations with his colleagues are impaired by over sensitivity" and he "has his staff well under control, but should have a better attitude to his subordinates". His "overall performance" was rated "good", and Mr. Chesi concluded in section III: "A 'very good' rating would be possible if he made the necessary progress in the areas indicated in this report". In observations he added on 19 January 1982 the complainant objected to the comments. On 2 February Mr. Chesi added that he had proposed several changes to which the complainant had not agreed. The complainant appealed to the Appeals Committee under Article 107 of the Service Regulations asking that the adverse comments and conclusion be deleted and his ratings improved. In its report of 28 October the Committee recommended amending the challenged parts of his report to read "Mr. Morley's relations with his colleagues were impaired by a certain sensitivity" and "he has his staff well under control", improving his rating for "Relationship with others" from 4 to 3, and deleting the conclusion in section III. On 21 December 1982 the President of the Office, observing that the Committee had found no obvious error or injustice in the report, decided not to amend it. That is the impugned decision.

B. The complainant maintains that the criticisms are unsubstantiated and untrue. According to the EPO's instructions on staff reports in circular No. 68 of 7 July 1980, any shortcomings should have been pointed out to him during the report period so that he could make them good. The criticisms were made because he was opposed to an irregular practice whereby his reports on his subordinates were being altered without his consent. Feeling that his reputation had been damaged by the criticisms and that he simply could not carry on, he resigned. He invites the Tribunal to order the deletion of the adverse comments and the change of his general rating to "very good" and on account of his "premature return to the United Kingdom with still 13 years to serve" to award him damages "to be assessed by the Tribunal for the loss of potential income". He also seeks deletion of a passage in a minute the Administration sent him on 8 July 1982.

C. The ESO observes in its reply that the President took his decision in the exercise of his discretion under Article 47 of the Service Regulations, which provides for staff reports. The Tribunal therefore has only a limited power of review and there is no evidence of any defect which would warrant its setting the decision aside. The comments and ratings were justified. The Appeals Committee confirmed the reference to the complainant's sensitivity and recommended no change in the general rating. The reporting officer's proposed changes did not find favour with the complainant and no longer hold good. The report as a whole cannot be regarded as unfavourable. The claim for damages is unsound because there is no causal link between the report and the complainant's departure. There is no evidence of ill will and he was given due credit for his abilities. The claim for deletion of a passage from the minute of 8 July 1982 is irreceivable because the minute is not a decision and even if it were he did not exhaust the internal means of redress.

D. The complainant enlarges on his arguments in his rejoinder. He alleges that his constant attempts to get the EPO to explain the criticisms led nowhere and argues that this alone warrants review. The reporting procedure is distorted by the quotas set for the various ratings, which prevent the reporting officer from giving the right one. He explains in detail why he thinks the criticisms are unfair. Mr. Chesi did not even become his reporting officer until 1980. The Administration's attitude, which is evidenced in the report and was undermining his health, left him no choice but to leave. He does not press his claims about the minute of 8 July 1982 and his general rating.

E. The EPO develops its case in its surrejoinder. It explains why Mr. Chesi was the reporting officer and observes that the complainant never objected on that score at the time. It dismisses the suggestion that he had to leave: why should he, when he had been promoted in 1979 and his general rating was "good"? He left of his own accord and must bear the consequences. The fact that on 13 July 1983 he wrote to the President asking that he be taken back by the EPO shows that his accusations of ill will and his claim for damages are groundless.

#### CONSIDERATIONS:

The main complaint in this case is about the contents of the annual report on the complainant for 1979 which contained criticisms of his attitude towards his colleagues and subordinates. The criticisms are carefully and moderately phrased. Whether or not they are justified, it is not suggested that they do not express the honest opinion of the reporting officer. The complaint is against the decision of the President made on 21 December 1982 refusing to order the deletion of the criticisms or any other change in the report on the ground that there was no "obvious error, obvious fault or manifest injustice in the procedure".

This is a decision within the President's discretion and moreover within an area of his discretion in which the Tribunal does not normally entertain complaints. It is essential to the value of an appraisal report that the reporter should be granted great freedom of expression. Normally, if there be any errors of judgment on his part, they can be sufficiently remedied by the incorporation in the report of the staff member's point of view. The text formulated by the President conforms with the Tribunal's case law. There is no ground for review.

When the complaint on the 1979 report was first raised, there was set in motion within the Organisation a conciliation procedure. In the course of it a note was addressed to the complainant containing a statement to which by a further and subsidiary complaint he takes exception and asks to have deleted. The Organisation objects to the receivability of this subsidiary complaint on the ground that it is not based on an appealable decision. In his rejoinder the complainant appears to accept this. In any event the objection is upheld.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 April 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner